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08/749,766 11/20/96 METCALF

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021967
HUNTON AND WILLIAMS
1900 K STREET N W
WASHINGTON DC 20006

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 27

Application Number: 08/749,766

Filing Date: November 20, 1996

Appellant(s): Randall B. Metcalf

Patrick A. Doody
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed March 26, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

Art Unit: 2644

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 2, 4-10, 12-15, 17-19 and 21-55 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Art Unit: 2644

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

3,710,034 MURRY 1-1973

5,315,060 PAROUTAUD 5-1994

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 to 2, 4 to 10, 12 to 15, 17 to 19, 21 to 34 and 35 to 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murry in view of PAROUTAUD. This rejection is set forth in prior Office action, Paper No. 22.

(11) *Response to Argument*

On page 9 to page 11, line 3, the appellant has argued the Examiner has erred in interpreting Murry because “ in Murry reference, the means for converting the sound (56 to 59) produced by sound sources mixes the audio signals at the very outset. Thus, the means for converting the received sounds to a plurality of audio signals converts mixed sounds, necessarily resulting in a mixed audio signal”. Therefore, Murry reference does not disclose “a means for converting sounds to separate audio signal without mixing the audio signal, as required in the pending claims”. The appellant’s argument is not persuasive because as described above, Murry reference does disclose separately receiving sounds (microphones 56 to 58 of fig. 10 separately receives sounds) and converting the separately received sounds to a plurality of separate audio signals without mixing the audio signals (outputs of 56 to 59

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converts the separately received sounds to a plurality of separate audio signals without mixing the audio signals). Also, the Examiner has concluded “it would have been obvious to combine PAROUTAUD’s teaching with [Murry] because in a reproduction of music, each microphone could detect the sound of each instrument in the musical instrument and record each instrument onto a separate channel. Also, volume of each signal could be controlled and amplified separately to drive each instrument transducer”. The appellant has argued that it is evident from the statement made in the Action that the combination of references is premised on what ‘could’ or ‘might’ happen, and what ‘would’ happen”. The appellant’s argument is not persuasive because the Examiner has used “could” to show that combining the two references would have been an alternate method to accomplish a certain effect.

On page 10, lines 5 to 17, the appellant has argued that in Murry reference, the sound being received is initially mixed and Murry mixes the recorded sounds on each channel into one audio signal associated with that channel”. The examiner agrees that the sound being received is initially mixed in Murry reference. However, the Murry reference still reads on the claims because it does disclose “means for separately receiving sounds (each microphone is separately receiving sounds) and “means for converting the separately received sounds to a plurality of separate audio signals without mixing the audio signals (audio signals which are outputted from the microphones are not being mixed).

On page 10, line 19 to page 3, the appellant has argued that since PAROUTAUD reference does not disclose loudspeakers, the entire disclosure of PAROUTAUD therefore is

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premised on the absence of loudspeakers. The examiner agrees that PAROUTAUD reference does not disclose loudspeaker, however, PAROUTAUD combined with Mutty does disclose loudspeaker.

On page 11, lines 7 to 28, the appellant has argued that even though the specification lists various instances where it may be desirable to mix some of the audio signals, none of which are disclosed in Murry or PAROUTAUD". Also, the appellant has argued that "because both Murry and Paraded requires blanket mixing of all audio signal at some point, their combined teachings still cannot render obvious the present claims". The appellant's argument is not persuasive because as described above, the prior art read on the claimed invention.

On page 12, line 16 to page 14, line 21, the appellant has argued that Murry and PAROUTAUD references are non-analogous art and that the Examiner has admitted that the two references art non-analogous. The Examiner would like to point out that the statement which the Examiner has made is incorrect. Murry and PAROUTAUD reference are analogous. Both reference disclose a sound system for capturing and reproducing sounds produced by a plurality of sound sources.

On page 14, line 24 to page 16, line 17, the appellant has argued that one of ordinary skill in the art would not be motivated to combine the invention of Paraded with the invention of Murry since to do so would frustrate the entire purpose of Murry. The appellant's argument is not persuasive because PAROUTAUD reference was applied to show that sounds are

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produced by the plurality of sound sources, an amplification network, and a dynamic control means are well known in the art.

On page 16, line 17 to page 19, line 13, the appellant has argued that the prior art does not disclose every limitations of claims. The appellant's argument is not persuasive because as clearly show above rejection, the prior art does disclose every limitations of the claims.

Conclusion:

The Examiner wants to point out that the claims are broad, especially the independent claims, where it could read on taking a plurality of tape recorder into a different room and separately recording the sounds from each room and replaying the sounds.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Minsun Oh Harvey
Minsun Oh Harvey

June 3, 2001

Forester W. Isen
FORESTER W. ISEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2700

HUNTON & WILLIAMS
1900 K. St., NW
Washington, d. C. 20006-1109
(202) 955-1906

Xu Mei
XU MEI
PRIMARY EXAMINER